

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters. (U 904 G)

Application 00-06-023

**ASSIGNED COMMISSIONER'S RULING DENYING
APPEAL OF ADMINISTRATIVE LAW JUDGE'S RULING**

Southern California Edison Company (SCE) on October 19, 2001, filed what it purports to be an "Appeal to Assigned Commissioner of Administrative Law Judge Walker's October 11, 2001 Ruling."

This matter involves a discovery dispute. By motion dated September 21, 2001, SCE sought an order that would void a nondisclosure agreement that SCE had negotiated with Southern California Gas Company (SoCalGas), substitute a generic nondisclosure agreement in its place, and compel SoCalGas to respond more fully to discovery requests. SCE also sought a 30-day extension of time in which to serve its testimony prior to hearing on November 27.

Administrative Law Judge (ALJ) Walker on October 11, 2001, denied SCE's motion in part and granted it in part. He declined to overturn the parties' nondisclosure agreement, finding that the agreement had been negotiated in good faith and that it duplicated an earlier agreement between the parties in a Federal Energy Regulatory Commission (FERC) proceeding. He commented that if SCE did not want to use the FERC protective order as the basis for its nondisclosure agreement here, SCE should have filed a motion asking the

Commission to rule on an appropriate form of agreement. Instead, SCE chose to sign the agreement, receive proprietary data, and then seek to rescind the agreement.

While declining to void the nondisclosure agreement, the ALJ found merit in SCE's request that certain voluminous data provided in hard copy should also be provided in electronic form. He ordered SoCalGas to make the data available in electronic form in response to four SCE data requests. The ALJ also directed SoCalGas to respond more fully to two other SCE data requests. Finally, while refusing to postpone the scheduled hearing dates of November 27-30, 2001, the ALJ granted SCE an additional week to submit its written testimony.

Having carefully reviewed SCE's appeal and the response to that appeal filed by SoCalGas, I see no reason to disturb the ALJ's Ruling. I agree with him that SCE should have sought the Commission's help earlier if it could not agree on terms of a nondisclosure agreement with SoCalGas or if SCE believed the agreement was not negotiated in good faith. On the other hand, SCE's major concern seems to be that the nondisclosure agreement limits release of SoCalGas data to three named consultants and to one outside lawyer (the same lawyer designated in the FERC agreement). If for some reason it is impossible for SCE to retain that lawyer, it would seem to me that SoCalGas should seriously consider substituting SCE's choice of another outside lawyer under the same terms and conditions of the nondisclosure agreement.

Accordingly, I affirm ALJ Walker's Ruling of October 11, 2001, and deny SCE's "appeal" of that Ruling.

I also remind SCE that our rules do not provide for interlocutory appeal of a procedural or evidentiary ruling of a presiding officer prior to consideration by the Commission of the entire merits of the matter. (55 CPUC2d 672, 676.) SCE

has been warned in the past that we frown on such a practice because it diverts the time and attention of litigants and the Commission and encourages piecemeal disposition of litigation. (D.98-09-073, 1998 Cal. PUC LEXIS 1080, at 9.)

Accordingly, **IT IS RULED** that the motion of Southern California Edison Company with respect to an Administrative Law Judge's Ruling of October 11, 2001, is denied.

Dated November 2, 2001, at San Francisco, California.

/s/ RICHARD A. BILAS

Richard A. Bilas
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Denying Appeal of Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated November 2, 2001, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.